

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID B. WHEELER and ELEANOR M.)
WHEELER,)
Plaintiffs,) 3:12-cv-0054-LRH-VPC
v.)
WELLS FARGO HOME MORTGAGE INC.;)
et al.,)
Defendants.)

ORDER

Before the court is plaintiffs David B. Wheeler and Eleanor M. Wheeler’s (“the Wheelers”) motion to remand. Doc. #5.¹

I. Facts and Procedural History

In October 2011, the Wheelers purchased real property from non-party Timothy Yardic. Although the property was vacant, the Wheelers allege that defendant Wells Fargo changed the locks on the property and evicted the Wheelers even though they had purchased the property.

Subsequently, the Wheelers filed a complaint in state court against defendants alleging state tort violations. Doc. #1, Exhibit A. Defendants removed the action to federal court based upon diversity jurisdiction. Doc. #1. Thereafter, the Wheelers filed the present motion to remand. Doc. #5.

¹ Refers to the court's docket entry number.

1 **II. Legal Standard**

2 Under 28 U.S.C. § 1441, "any civil action brought in a State court of which the district
 3 courts of the United States have original jurisdiction, may be removed by the defendant or the
 4 defendants, to the district court of the United States for the district and division embracing the
 5 place where such action is pending." 28 U.S.C. § 1441(a). A district court has original jurisdiction
 6 over civil actions where the suit is between citizens of different states and the amount in
 7 controversy, exclusive of interest and costs, exceeds \$75,000.00. 28 U.S.C. § 1332(a). In a diversity
 8 case, if a complaint does not specify the amount of damages, "the removing defendant bears the
 9 burden of establishing, by a preponderance of the evidence, that the amount in controversy exceeds
 10 \$[75],000.00." *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

11 Removal of a case to a district court may be challenged by motion. 28 U.S.C. § 1441(c). A
 12 federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal statutes are
 13 construed restrictively and in favor of remanding a case to state court. *See Shamrock Oil & Gas*
 14 *Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
 15 1992).

16 **III. Discussion**

17 In their motion, the Wheelers concede that the parties are diverse for diversity jurisdiction
 18 purposes, but argue that defendant's notice of removal is insufficient to prove, by a preponderance
 19 of the evidence, that the amount in controversy exceeds \$75,000.00. *See Doc. #5*. The court has
 20 reviewed the document and pleadings in this matter and finds that the amount in controversy does
 21 not exceed the \$75,000 threshold. In their complaint, the Wheelers are seeking roughly \$4,000 in
 22 property damages related to defendants' constructive eviction and for changing the property locks.
 23 Even though the Wheelers have requested treble damages under Nevada law, trebling the identified
 24 property damage still falls short of the court's \$75,000 jurisdictional threshold, by \$63,000.

25 In opposition, defendants argues that the Wheelers have requested both attorney's fees and
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1 punitive damages, and therefore, the amount in controversy is over the \$75,000 requirement. The
2 court disagrees. Generally, the amount in controversy may be satisfied by all of a plaintiff's claims
3 for damages, including attorney's fees and punitive damages. *See Kroske v. U.S. Bank Corp.*, 432
4 F.3d 976, 980 (9th Cir. 2005). However, the mere possibility of a punitive damages or attorney's
5 fees award is not sufficient to prove that the amount in controversy has been met. In order to meet
6 their burden for removal, a defendant must present evidence that the amount of any award, more
7 likely than not, exceeds the amount needed to increase the amount in controversy to \$75,000. *See*
8 *McCaa v. Massachusetts Mutual Life Insurance Company*, 330 F. Supp. 2d 1143, 1149 (D. Nev.
9 2004); *see also, Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992).

10 Here, defendants have failed to provide the court with sufficient evidence to establish that
11 the amount in controversy will be exceeded by an award of punitive damages and/or attorney's
12 fees. Further, defendants have not shown that such an award is more likely than not appropriate in
13 this action. Therefore, the court finds that defendants have failed to meet their burden and shall
14 remand this action for lack of diversity jurisdiction.

15
16 IT IS THEREFORE ORDERED that plaintiff's motion to remand (Doc. #5) is GRANTED.
17 The clerk of court shall REMAND this action to the Second Judicial District Court for the State of
18 Nevada.

19 IT IS SO ORDERED.

20 DATED this 17th day of May, 2012.



21
22 LARRY R. HICKS
23 UNITED STATES DISTRICT JUDGE
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